

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number 15.cc.

Meeting Type: Regular

Meeting Date: 7/26/2012

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

Recognition, Non-Disturbance and Attornment Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Recognition, Non-Disturbance and Attornment Agreement among the City of Huntsville, Twickenham Square Venture, LLC, and Publix Alabama, LLC.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: 7-6-12

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 7/26/2012

Department Contact: Peter Joffrion

Phone # 5026

Contract or Agreement: Recognition, Non-Disturbance and Attornment Agreement

Document Name: Recognition, Non-Disturbance and Attornment Agreement among the City of Huntsvil...

City Obligation Amount: NA

Total Project Budget:

Uncommitted Account Balance:

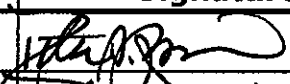
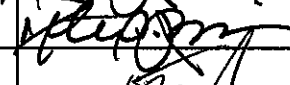
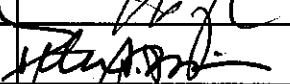

Account Number:

Procurement Agreements

<u>Select...</u>	<u>Select...</u>
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Grant-Funded Agreements

<u>Select...</u>	Grant Name: <u></u>
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Department	Signature	Date
1) Originating		7-6-12
2) Legal		7-6-12
3) Finance		7/26
4) Originating		7-6-12
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 12-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Recognition, Non-Disturbance and Attornment Agreement by and between the City of Huntsville, Twickenham Square Venture, LLC, and Publix Alabama, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, TWICKENHAM SQUARE VENTURE, LLC, AND PUBLIX ALABAMA, LLC.," consisting of ten (10) pages, including Exhibits A, B and C, and the date of July 26, 2012 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 26th day of July, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 26th day of July, 2012.

Mayor of the City of
Huntsville, Alabama

RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into this 26th day of July, 2012, by and between **CITY OF HUNTSVILLE, ALABAMA** ("Prime Landlord"), **TWICKENHAM SQUARE VENTURE, LLC** ("Landlord") and **PUBLIX ALABAMA, LLC** ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant have entered into that certain Lease Agreement (the "Publix Lease"), dated July __, 2012, in respect of premises located on certain real property (the "Shopping Center Tract") in Huntsville, Madison County, Alabama, and being more particularly described on Exhibit "A" attached hereto and by reference thereto incorporated herein;

WHEREAS, Prime Landlord and Landlord have entered into that certain City Parking Garage Lease Agreement (Retail Component) dated as of July 26, 2012 (the "Parking Garage Lease") in respect of that certain parking garage (the "Parking Garage") to be constructed on that certain property (the "Parking Garage Tract") in Huntsville, Madison County, Alabama, and being more particularly described on Exhibit "B" attached hereto and by reference thereto incorporated herein, which Shopping Center Tract, Parking Garage, and Parking Garage Tract are depicted and so designated on the Site Plan (the "Site Plan") attached hereto as Exhibit "C" and by reference thereto incorporated herein;

WHEREAS, the parties hereto hereby acknowledge and agree that the Publix Lease is conditioned and contingent upon the utilization by Tenant of the Parking Garage as contemplated by the Parking Garage Lease; and

WHEREAS, the parties hereto desire to provide for the continued utilization by Tenant of the Parking Garage as contemplated by the Publix Lease and the Parking Garage Lease on the terms contained herein.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the execution and delivery by Tenant to Landlord of the Publix Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated herein as if the same were restated herein.

2. Inducement. Prime Landlord hereby acknowledges that the execution of this Agreement constitutes an inducement to Tenant to enter into the Publix Lease.

3. Recognition, Non-Disturbance, and Attornment. Prime Landlord, Landlord, and Tenant hereby acknowledge and agree that so long as the Publix Lease remains in full force and effect:

(a) Prime Landlord shall deliver to Tenant, at the address and in the manner hereinbelow provided, a copy of all notices required to be given by Prime Landlord to Landlord under the terms and provisions of the Parking Garage Lease, including, without limitation, any notice of the occurrence of an event of default thereunder on the part of Landlord, and the action required on the part of Landlord to cure such event of default, and any notice of termination or expiration of the Parking Garage Lease. Prime Landlord hereby covenants and agrees that within the time permitted for the curing of any such default under the Parking Garage Lease, Tenant shall have the right to cure such event of default, and any such cure shall be as effective to prevent the rights of the Landlord from being forfeited or adversely affected because of any such default as the same would have been if done or performed by Landlord.

(b) Prime Landlord hereby covenants and agrees that Prime Landlord shall not terminate the Parking Garage Lease unless and until Prime Landlord shall have notified Tenant of the occurrence of any act giving rise to such right to terminate the Parking Garage Lease, and Landlord and Tenant both shall have failed to cure such event of default within the time permitted under the Parking Garage Lease, but in no event less than fifteen (15) days after receipt by Tenant of any such notice of a monetary event of default, or thirty (30) days after the date of receipt of any such notice in the case of a non-monetary default; provided, however, if such non-monetary event of default is not reasonably capable of being cured within thirty (30) days, then, if within such thirty (30) day period Tenant notifies Prime Landlord of its intention to cure such non-monetary default, such thirty (30) day period shall be extended as is reasonably necessary to effect such cure.

(c) Subject to the terms and provisions of Subparagraph (a) above, in the event that Tenant succeeds to the interest of Landlord under the Parking Garage Lease (as a permitted assignee or otherwise), then Tenant agrees to continue under the terms and conditions of the Parking Garage Lease and to attorn to Prime Landlord, its successors and assigns, to the same extent and with the same force as if Tenant were the tenant under the Parking Garage Lease upon the same terms as existed at the time of such succession. Tenant shall thereupon attorn to Prime Landlord as tenant under the Parking Garage Lease, and, notwithstanding any prohibition on assignment contained in the Parking Garage Lease that would otherwise prohibit Tenant from succeeding to the interest of Landlord thereunder, Prime Landlord shall recognize Tenant as the tenant under the Parking Garage Lease, and Prime Landlord shall not disturb Tenant's rights and privileges under the Parking Garage Lease so long as Tenant performs and discharges all duties, obligations and liabilities on the part of Tenant, as tenant under the Parking Garage Lease, arising on and after the date on which Tenant succeeds to the interests of Landlord under the Parking Garage Lease throughout the remainder of its term.

4. Notices. Whenever notice is required or permitted under this Agreement, it shall be in writing and shall be deemed to be properly given upon receipt or refusal if sent by U. S. Postal Service, postage prepaid, by certified or registered mail, return receipt requested, or if personally delivered by hand or sent by nationally recognized overnight courier service. For purposes of this Agreement, delivery of a notice to an address from which the recipient has moved but failed to notify the other parties of modification of such address as hereinafter provided shall be deemed to constitute refusal of such notice by the intended recipient. All

notices required or permitted under this Agreement shall be delivered to the party entitled thereto at the following addresses:

Prime Landlord:	City of Huntsville, Alabama City of Huntsville Attention: Mayor 308 Fountain Circle P.O. Box 308 Huntsville, Alabama 35804
With a copy to the attention of:	City of Huntsville Attention: City Attorney 308 Fountain Circle P.O. Box 308 Huntsville, Alabama 35804
Landlord:	[PGM-Huntsville, LLC][?] 9019 Overlook Boulevard, Suite C-2 Brentwood, Tennessee 37027 Attention: J. Dudley Parker
With a copy to:	D. Mark Sheets, Esq. Bass, Berry & Sims 150 Third Avenue South, Suite 2800 Nashville, Tennessee 37201
Tenant:	Publix Alabama, LLC 3300 Publix Corporate Parkway Lakeland, FL 33811-3002 Attn: President
With a copy to:	Publix Super Markets, Inc. 3300 Publix Corporate Parkway Lakeland, FL 33811-3002 Attn: General Counsel
With a copy to:	McClure & Kornheiser, LLC 6400 Powers Ferry Road, Suite 150 Atlanta, Georgia 30339 Attn: Jay Y. McClure, Esq.

The foregoing addresses may be modified by delivery of written notice of such modification to the parties entitled thereto, which written notice shall be delivered and deemed effective as set forth herein.

5. Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-title, and assigns. When used herein, the term "Prime Landlord" refers to the landlord under the Parking Garage Lease and any successor to the interest of the landlord under the Parking Garage Lease.

The term "Landlord" refers to the tenant under the Parking Garage Lease and to any successor to the interest of the landlord thereunder. The term "Tenant" refers to the tenant under the Publix Lease and to any successor to the interest of the tenant under the Publix Lease.

6. Time is of the Essence. Time is of the essence of this Agreement.

7. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

8. Entire Agreement. This Agreement contains the entire agreement among the parties hereto, and this Agreement shall not be modified or amended except by a written agreement executed by all parties hereto in the same manner in which this Agreement has been executed.

Remainder of Page intentionally left blank.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal as of the date first above appearing.

PRIME LANDLORD:

CITY OF HUNTSVILLE, ALABAMA

ATTEST:

Charles E. Hagood

By: _____
Name: Tommy Battle
Its: Mayor

STATE OF ALABAMA)
)
MADISON COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that **TOMMY BATTLE and CHARLES E. HAGOOD**, whose names as Mayor and Clerk-Treasurer, respectively, of **CITY OF HUNTSVILLE, ALABAMA**, a municipal corporation, are signed to the foregoing Instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the foregoing Instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the ____ day of _____, 2012.

[NOTARIAL SEAL]

Notary Public
My Commission Expires:

LANDLORD:

WITNESS:

TWICKENHAM SQUARE VENTURE, LLC
a Delaware limited liability company

By: _____ (SEAL)
Name: _____
Its: _____

STATE OF TENNESSEE)
)
WILLIAMSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that _____, whose name as _____ of **TWICKENHAM SQUARE VENTURE, LLC**, a Delaware limited liability company, is signed to the foregoing Instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing Instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the _____ day of _____, 20____.

[NOTARIAL SEAL]

Notary Public
My Commission Expires:

TENANT:

WITNESS:

PUBLIX ALABAMA, LLC

By: _____ (SEAL)
Jeffrey Chamberlain
President

STATE OF FLORIDA)
)
POLK COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that JEFFREY CHAMBERLAIN, whose name as President of PUBLIX ALABAMA, LLC, an Alabama limited liability company, is signed to the foregoing Instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the Instrument, he/she in his/her capacity as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand this the ____ day of _____, 20__.

[NOTARIAL SEAL]

Notary Public
My Commission Expires:

EXHIBIT A

Lot 6, according to the Final Plat of Twickenham Square Subdivision, recorded as Instrument No. 2012 0427000257150 in the Office of the Judge of Probate of Madison County, Alabama, as amended by that certain Surveyor's Affidavit, dated June 13, 2012, and recorded June 13, 2012, in Document Number 20120613000366350 in the Office of the Judge of Probate of Madison County, Alabama.

EXHIBIT B

CITY PARKING GARAGE PROPERTY

Lot 4, according to the Final Plat of Twickenham Square Subdivision, recorded as Instrument No. 2012 0427000257150 in the Office of the Judge of Probate of Madison County, Alabama, as amended by that certain Surveyor's Affidavit, dated June 13, 2012, and recorded June 13, 2012, in Document Number 20120613000366350 in the Office of the Judge of Probate of Madison County, Alabama.

EXHIBIT C

SITE PLAN

